

## Section

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16.01: Authority

225 CMR 16.00 is promulgated pursuant to M.G.L. c. 25A, § 11F ½.

16.02: Definitions

Aggregation. A group of one or more Generation Units that receives a single Statement of Qualification from the Department under criteria and procedures set forth in 225 CMR 16.05(6).

Alternative Compliance Payment. A payment of a certain dollar amount per MWh, resulting in the issuance of Alternative Compliance Credits, which a Retail Electricity Supplier may submit to the Department in *lieu* of providing APS Alternative Generation Attributes required under 225 CMR 16.07.

Alternative Compliance Credit. A credit obtained by a Retail Electricity Supplier upon making an Alternative Compliance Payment. Such credit may be used to document compliance with 225 CMR 16.07. One unit of credit shall be equivalent to the APS Alternative Generation Attribute associated with one MWh of electrical energy output, or with the equivalent of such output as provided in 225 CMR 16.05(1)(a)2.c and in 225 CMR 16.05(1)(a)3, from an APS Alternative Generation Unit.

APS Alternative Generation. The electrical energy output of an Alternative Generation Unit, or the equivalent of such output as provided in 225 CMR 16.05(1)(a)2.c and in 225 CMR 16.05(1)(a)3, or that portion of the electrical energy output of an Alternative Generation Unit that qualifies under a Co-firing Waiver pursuant to 225 CMR 16.05(3) or under any other applicable provision of 225 CMR 16.00.

APS Alternative Generation Attribute (Attribute). The Generation Attribute of the electrical energy output of a specific APS Alternative Generation Unit that derives from the Unit's production of APS Alternative Generation.

APS Alternative Generation Unit. A Generation Unit or Aggregation that has received a Statement of Qualification from the Department.

APS Ineligible Energy Source. Any of the following fuels and energy sources, whose use is not eligible for APS Alternative Energy Attributes except under the circumstances specified herein: coal and petroleum coke, except when used in Gasification; petroleum-derived fuels and materials; natural gas, except when used in Gasification or Combined Heat and Power; and nuclear power.

Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays.

Capture and Permanent Sequestration. [RESERVED]

Certificates Obligation. A term defined in the NEPOOL GIS Operating Rules at Rule 4.1(b), or any successor rule.

CHP Efficiency. The sum of (a) the electrical energy generated and (b) the Useful Thermal Energy produced by a CHP Unit, divided by the energy content of all fuels or other energy input to the CHP Unit based on the higher heating value.

Combined Heat and Power (CHP). The generation of electrical and Useful Thermal Energy in a single integrated system.

Commercial Operation Date. The date that a Generation Unit first produces electrical energy for sale within the ISO-NE Control Area or within an adjacent Control Area. In the case of a Generation Unit that is connected to the End-use Customer's side of the electric meter or produces Off-grid Generation, the date that such Generation Unit first produces electrical energy.

Compliance Filing. A document filed annually by a Retail Electricity Supplier with the Department documenting compliance with 225 CMR 16.07, consistent with the format set forth in the Guidelines and submitted no later than the first day of July, or the first Business Day thereafter, of the subsequent Compliance Year.

Compliance Year. A calendar year beginning January 1 and ending December 31, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of 225 CMR 16.07 and 16.08.

Control Area. A geographic region in which a common generation control system is used to maintain scheduled interchange of electrical energy within and without the region.

Department. The Massachusetts Department of Energy Resources (DOER), established by M.G.L. c. 25A §1.

Efficient Steam Technology. [RESERVED]

End-use Customer. A person or entity in Massachusetts that purchases electrical energy at retail from a Retail Electricity Supplier, except that a Generation Unit taking station service at wholesale from ISO-NE or self-supplying from its owner's other generating stations, shall

not be considered an End-use Customer.

Flywheel. A device used to store rotational kinetic energy.

Gasification. A process in which a fuel, excluding petroleum-derived fuel, is converted to a gas of sufficient quality that it is capable of use in a combined cycle natural gas Generation Unit.

Generation Attribute. A non-price characteristic of the energy output of a Generation Unit including, but not limited to, the Unit's fuel type, emissions, vintage and APS eligibility.

Generation Unit. A facility that converts a fuel or an energy resource into electrical energy.

GIS Certificate. An electronic record produced by the NEPOOL GIS that identifies Generation Attributes of each MWh accounted for in the NEPOOL GIS.

Guidelines. A set of clarifications, interpretations, and procedures, including forms, developed by the Department to assist in compliance with the requirements of 225 CMR 16.00. The Department may issue new or revised Guidelines from time to time. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 16.00.

Incremental Useful Thermal Energy. Useful Thermal Energy produced by a CHP Unit that is distinct in its final distribution, beneficial measure, and metering from Useful Thermal Energy previously produced by the CHP Unit.

ISO-NE. ISO New England Inc., the independent system operator for New England, the regional transmission organization for most of New England, which is authorized by the Federal Energy Regulatory Commission (FERC) to exercise for the New England Control Area the functions required pursuant to the FERC's Order No. 2000, the FERC's corresponding regulations, and any successor FERC orders and regulations.

ISO-NE Settlement Market System. The ISO-NE's electronic database system into which all real-time load and generation data are entered and from which such data are provided to the NEPOOL GIS.

MassDEP. The Massachusetts Department of Environmental Protection established by M.G.L. c. 21A, § 7.

Megawatt-hour (MWh). A unit of electrical energy or work equivalent to one million watts of power operating for one hour.

NEPOOL GIS. The NEPOOL Generation Information System, which includes a generation information database and certificate system, operated by the New England Power Pool (NEPOOL), its designee or successor entity, that accounts for Generation Attributes of electrical energy consumed within, imported into, or exported from the ISO-NE Control Area.

North American Electric Reliability Council (NERC) Tag. An identification of an electrical energy interchange transaction assigned in accordance with rules set forth by the North

American Electric Reliability Council.

Off-grid Generation. The electrical energy produced by a Generation Unit that is not connected to a utility transmission or distribution system.

Operator. Any person or entity who has charge or control of a Generation Unit subject to 225 CMR 16.00, including without limitation a duly authorized agent or lessee of the Owner, or a duly authorized independent contractor.

Owner. Any person or entity who, alone or in conjunction with others, has legal ownership, a leasehold interest, or effective control over the real property or property interest upon which a Generation Unit is located, or the airspace above said real property, including without limitation a duly authorized agent of the Owner. For the purposes of 225 CMR 16.02, Owner does not mean a person or entity holding legal title or security interest solely for the purpose of providing financing.

Paper-derived Fuel. Alternative, paper-derived fuel source approved by the MassDEP through a beneficial use determination under 310 CMR 19.060, with a composition of not more than 15 per cent by energy content of fossil fuel derived sources.

Retail Electricity Product. An electrical energy offering that is distinguished by its Generation Attributes and that is offered for sale by a Retail Electricity Supplier to End-use Customers.

Retail Electricity Supplier. A person or entity that sells electrical energy to End-use Customers in Massachusetts, including but not limited to electric utility distribution companies supplying basic service or any successor service to End-use Customers. A Municipal Lighting Plant shall be considered a Retail Electricity Supplier; however, it shall be exempt from the obligations of a Retail Electricity Supplier under 225 CMR 16.00 so long as and insofar as it is exempt from the requirements to allow competitive choice of generation supply pursuant to M.G.L. c. 164, § 47A.

Statement of Qualification (SQ). A written document from the Department that qualifies a Generation Unit or Aggregation as an APS Alternative Generation Unit, or that qualifies a portion of the electrical energy output of a Generation Unit or Aggregation as APS Alternative Generation.

Useful Thermal Energy. Energy (a) in the form of direct heat, steam, hot water, or other thermal form that is used in production and beneficial measures for heating, cooling, humidity control, process use, or other valid thermal end use energy requirements and (b) for which fuel or electricity would otherwise be consumed.

Valid Air Permit. Within the United States, a current and effective authorization, license, certificate, or like approval to construct and/or operate a source of air pollution, issued or required by the regulatory agency designated in the applicable State Implementation Plan to issue permits under the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.* In jurisdictions outside of the United States, it shall be a document demonstrating an equivalent authorization.

## 16.03: Administration

225 CMR 16.00 shall be administered by the Department.

16.04: Applicability

225 CMR 16.00 applies to Retail Electricity Suppliers and to the Owners or Operators of APS Alternative Generation Units.

16.05: Eligibility Criteria for APS Alternative Generation Units

(1) Eligibility Criteria. A Generation Unit may qualify as an APS Alternative Generation Unit subject to the limitations in 225 CMR 16.05.

(a) Technologies. The Generation Unit shall use one or more of the technologies listed in 225 CMR 16.05(1)(a)1 through 5.

1. Gasification. A Generation Unit that uses fuel produced from a Gasification facility may qualify as an APS Alternative Generation Unit, subject to the limitations in 225 CMR 16.05(1)(a)1.

a. The Generation Unit's Owner or Operator shall document to the satisfaction of the Department, in consultation with MassDEP, that the Gasification facility has established and maintains a Capture and Permanent Sequestration program of carbon dioxide, and submits, not less than annually, compliance reports of such program to the Department and MassDEP.

b. The total overall fuel conversion efficiency from feedstock to final combustible fuel shall not be less than 70 per cent, as determined in a manner to be specified by the Department.

c. The Generation Unit must have a Valid Air Permit, and, if located outside of Massachusetts, the Generation Unit must demonstrate to the satisfaction of the Department that the emission rates for the Generation Unit are consistent with rates prescribed by the MassDEP for comparably fueled Generation Units.

2. Combined Heat and Power. A Generation Unit that is operated to produce Combined Heat and Power may qualify as an APS Alternative Generation Unit, subject to the limitations in 225 CMR 16.05(1)(a)2.

a. CHP Efficiency Standard. The Generation Unit shall demonstrate that it meets the appropriate CHP Efficiency standard in 225 CMR 16.05(1)(a)2.a.

i. For a CHP Unit which first produced either electrical or Useful Thermal Energy on or after January 1, 2008, the CHP Efficiency must be greater than or equal to 70 percent.

ii. For a CHP Unit which, before January 1, 2008, only generated electrical energy, there is no CHP Efficiency requirement.

iii. For a CHP Unit which, before January 1, 2008, only produced Useful Thermal Energy, the CHP Efficiency must be greater than 70 percent.

iv. For a CHP Unit which, before January 1, 2008, produced both electrical energy and Useful Thermal Energy which adds Incremental Useful Thermal Energy on or after January 1, 2008, there is no CHP Efficiency requirement.

v. For a CHP Unit which, before January 1, 2008, produced both electrical energy and Useful Thermal Energy which adds incremental new nameplate electric generation capacity on or after January 1, 2008, the CHP Efficiency must be greater than 70 percent.

b. Determination of CHP Efficiency Standard. A CHP Unit shall provide for the metering and reporting of electric energy generated, Useful Thermal Energy produced, and fuel consumed in a manner prescribed in 225 CMR 16.05(1)(c). For each quarter of the Compliance Year, CHP Efficiency shall be determined using (a) the total electric energy generated in that quarter expressed in MWh, (b) the total Useful Thermal Energy produced in that quarter expressed in MWh, where each 3412 thousand BTUs of Useful Thermal Energy is equivalent to one MWh, and (c) the total of all fuel and any other energy consumed in that quarter expressed in MWh and calculated using the energy content of the fuel based on higher heating value.

c. Determination of APS Alternative Energy Attributes. The Generation Unit shall be provided APS Alternative Energy Attributes as specified in 225 CMR 16.05(1)(a)2.c.

i. A CHP Unit which first produced both electrical and Useful Thermal Energy on or after January 1, 2008, and which meets its required CHP Efficiency standard in a quarter of the Compliance Year, shall be provided APS Alternative Energy Attributes equal to the lesser of (a) 50 percent of the Useful Thermal Energy produced in that quarter, and (b) the electrical energy generated in that quarter.

ii. A CHP Unit which produced both electrical and Useful Thermal Energy before January 1, 2008, and which meets its required CHP Efficiency standard in a quarter of the Compliance Year, shall be provided APS Alternative Energy Attributes for that quarter as specified in 225 CMR 16.05(1)(a)2.c.ii.

A. If the CHP Unit added incremental new nameplate electric generation capacity on or after January 1, 2008, the APS Alternative Energy Attributes shall equal the electrical energy generated that quarter attributable to that incremental increase in capacity.

B. If the CHP Unit added Incremental Useful Thermal Energy on or after January 1, 2008, the APS Alternative Energy Attributes shall equal 50 percent of the Incremental Useful Thermal Energy produced in that quarter.

C. If the CHP Unit added both incremental new nameplate electric generation capacity and Incremental Useful Thermal Energy on or after

January 1, 2008, the APS Alternative Energy Attributes shall equal the lesser of (a) 50 percent of the Incremental Useful Thermal Energy produced in that quarter, and (b) the electrical energy generated in that quarter and attributable to such incremental increase in capacity.

d. Energy Deliverability Requirement. The CHP Unit shall deliver Useful Thermal Energy to an end-use load located in the Commonwealth of Massachusetts.

e. Eligibility of RPS Class I and Class II Renewable Generation Units. A CHP Unit that is qualified as an RPS Class I Renewable Generation Unit under 225 CMR 14.00 or as an RPS Class II Renewable Generation Unit under 225 CMR 15.00 may also be qualified as an APS Alternative Generation Unit if it meets all appropriate criteria in 225 CMR 16.05(1)(a)2.a-d.

3. Flywheel Storage Unit. A Flywheel Storage Unit that stores and discharges electrical energy may qualify as an APS Alternative Generation Unit, subject to the limitations in 225 CMR 16.05(1)(a)3.

a. The Flywheel Storage Unit must participate in the ISO-NE regulation market.

b. The portion of the electrical energy output of a Flywheel Storage Unit that may qualify for APS Alternative Generation shall be calculated each quarter of the Compliance Year as 22% of the electrical energy discharged from the Flywheel Storage Unit during the quarter minus the electrical energy losses from the Flywheel Storage Unit during the quarter, where the electrical energy losses are equal to the electrical energy used to charge the Flywheel Storage Unit during the quarter minus the electrical energy discharged from the Flywheel Storage Unit during the quarter.

4. Paper-derived Fuel. A Generation Unit that uses Paper-derived Fuel may qualify as an APS Alternative Generation Unit subject to the limitations in 225 CMR 16.05(1)(a)4.

a. The Paper-derived Fuel shall displace, on an energy content basis, an equal or greater portion of the Unit's fossil fuel.

b. The Generation Unit's Owner or Operator shall obtain an amendment to the Unit's Valid Air Permit to reflect usage of Paper-derived Fuel.

c. The Generation Unit's Owner or Operator shall provide the Department with copies of documentation provided to the MassDEP required under its beneficial use determination.

d. The portion of the electrical energy output of the Generation Unit that may qualify for APS Alternative Generation during any given time period shall be that portion attributable to the quantity of Paper-derived Fuel that is not derived from any fossil sources during that time period.

5. Efficient Steam Technology. [RESERVED]

(b) Commercial Operation Date. The Commercial Operation Date shall be on or after January 1, 2008.

(c) Metering. The electrical energy output from a Generation Unit or a Flywheel Storage Unit and the Useful Thermal Energy of a CHP Generation Unit shall be verifiable by the ISO-NE or by an independent verification system or person participating in the NEPOOL GIS accounting system as an independent Third Party Meter Reader, as defined in Rule 2.5(j) of the NEPOOL GIS Operating Rules, or any successor rule, and approved by the Department.

(d) Location. The Generation Unit must be located within the ISO-NE Control Area, except where otherwise specified in 225 CMR 16.00, and subject to the limitations in 225 CMR 16.05(1)(d).

1. Off-grid Generation. If the Generation Unit produces Off-grid Generation, such Unit must be located in Massachusetts.

2. Behind-the-meter Generation. If the Generation Unit is wired to the electrical system on the End-use Customer's side of a retail electric meter, such Unit must be located within the ISO-NE Control Area.

(e) Net Carbon Dioxide Emissions Rate. A Generation Unit shall not exceed a net carbon dioxide emissions rate of 890 pounds per MWh, including all net carbon dioxide emission related to combustion, gasification, fuel processing, and sequestration, whether or not such activities occur at the Generation Unit or another location and in the case of a CHP Unit shall also include thermal delivery.

(2) Co-Firing Waiver. A portion of the electrical energy output of a Generation Unit that uses an APS Ineligible Energy Source with another fuel may qualify as APS Alternative Generation provided the Generation Unit meets the eligibility requirements of 225 CMR 16.05, subject to the limitations in 225 CMR 16.05(2).

(a) The percentage of the total electrical energy output that qualifies as APS Alternative Generation in a given time period shall be equal to one minus the ratio of the net heat content of the APS Ineligible Energy Source consumed to the net heat content of all fuel consumed in that time period.

(b) If co-firing an APS Ineligible Energy Source with another fuel, the entire Generation Unit must demonstrate to the satisfaction of the Department in consultation with the MassDEP that the Unit meets or will meet the emission performance standards, including the net carbon dioxide emissions rate, that are or would be required by the MassDEP for comparably-fueled Units within Massachusetts, including the standards specified for the technology type of the Unit as set forth in 225 CMR 16.05(1)(a) and (e). The Department may require the Generation Unit Owner or Operator to retain at its own expense a third-party consultant deemed satisfactory to the Department, to provide DOER and the MassDEP with assistance in determining whether this criterion is or will be met by the Unit.

(c) The Generation Unit must provide a fuel supply plan that specifies each and every



fuel that it intends to use, in what relative proportions in co-firing, and with what individual input heat values. Such plan shall include the procedures by which the Unit will document to the satisfaction of the Department its compliance with the plan.

(d) The provisions of 225 CMR 16.05(2) shall not apply to the incidental use of an APS Ineligible Energy Source solely for the purpose of cold starting a Generation Unit that otherwise exclusively uses other fuels.

(3) Special Provisions for Aggregations. An Aggregation of Generation Units that are located behind the customer meter or that are Off-grid Generation Units, each of which could independently meet the relevant requirements of 225 CMR 16.05, may receive a single SQ and be treated as a single APS Alternative Generation Unit under the following criteria and procedures:

(a) Each Generation Unit in such Aggregation must use the same technology as all other Units in the Aggregation.

(b) Each of the Owners or Operators of Generation Units within the Aggregation must enter into an agreement with a person or entity that serves as the Authorized Agent for the Aggregation in all dealings with the Department and with the NEPOOL GIS, and such agreement must include procedures by which the electrical energy output of each Unit shall be monitored and reported to the NEPOOL GIS.

(c) The Authorized Agent of the Aggregation must establish and maintain a Generator account at the NEPOOL GIS under the NEPOOL GIS Operating Rules, including all provisions for Non-NEPOOL Generator Representatives, as that term is defined in Rule 2.1(a)(vi) of those Rules, or any successor rules.

(d) The electrical energy output, or the equivalent of such output as provided in 225 CMR 16.05(1)(a)2.c and in 225 CMR 16.05(1)(a)3, of each of the Generation Units in the Aggregation must be individually monitored and recorded, and it must be reported to the NEPOOL GIS as part of an aggregated total for the Aggregation, by an independent Third Party Meter Reader as defined in Rule 2.5(j) of the NEPOOL GIS Operating Rules, or any successor rule, and approved by the Department.

#### 16.06: Statement of Qualification Process for APS Alternative Generation Units

(1) Statement of Qualification Application. A Statement of Qualification Application shall be submitted to the Department by the Owner or Operator of the Generation Unit or Aggregation. The applicant must use the most current forms and associated instructions provided by the Department, and must include all information, documentation, and assurances required by such forms and instructions.

(2) Review Procedures.

(a) The Department will notify the applicant when the Statement of Qualification Application is administratively complete or if additional information is required pursuant to 225 CMR 16.06(1).

(b) The Department may, in its sole discretion, provide an opportunity for public

comment on any Statement of Qualification Application.

(3) Issuance or Non-Issuance of a Statement of Qualification.

(a) If the Department finds that all or a portion of the electrical energy output of a Generation Unit or of an Aggregation meets the requirements for eligibility as APS Alternative Generation pursuant to 225 CMR 16.05, the Department will provide the Owner or Operator of such Unit or Aggregation with an SQ.

(b) The SQ shall include any applicable restrictions and conditions that the Department deems necessary to ensure compliance by a particular Generation Unit or Aggregation with the provisions of 225 CMR 16.00.

(c) If the Generation Unit or Aggregation does not meet the requirements for eligibility as an APS Alternative Generation Unit, the Department shall provide written notice to the Owner or Operator, including the Department's reasons for such finding.

(4) APS Effective Date. The APS Effective Date shall be the earliest date on which electrical energy output of an APS Alternative Generation Unit can result in the creation of APS GIS Certificates, except that the APS Effective Date shall not be earlier than the date on which the Department determines that the Unit has commenced compliance with the applicable emission standards in its SQ. But in no instance shall the APS Effective Date be earlier than January 1, 2009.

(5) Notification Requirements for Change in Eligibility Status. The Owner or Operator of an APS Alternative Generation Unit shall notify the Department of any changes in the technology, operation, emissions, fuel sources, energy resources, or other characteristics of the Generation Unit that would affect the eligibility of the Unit as an APS Alternative Generation Unit. The Owner or Operator shall submit the notification to the Department no later than five days following the end of the month during which such changes were implemented. The notice shall state the date the changes were made to the APS Alternative Generation Unit and describe the changes in sufficient detail to enable the Department to determine if a change in eligibility is warranted.

(6) Notification Requirements for Change in Ownership, Generation Capacity, or Contact Information. The Owner or Operator of an APS Alternative Generation Unit shall notify the Department of any changes in the ownership, operating entity, generation capacity, NEPOOL GIS account, independent verification system for the Unit's or Aggregation's electrical energy output, or contact information for the Generation Unit or Aggregation. The Owner or Operator shall submit the notification to the Department no later than five days following the end of the month during which such changes were implemented.

(7) Time Limit for Project Implementation. Any SQ issued on or after the effective date of this section shall expire 48 months after the issuance date of the SQ (the Expiration Date) unless the Commercial Operation Date of the Generation Unit or Aggregation is on or before the Expiration Date. The Department may, at its discretion, grant an extension of the Expiration Date of the SQ upon petition by the Owner or Operator of the Generation Unit or Aggregation. If the Owner or Operator of such Unit or Aggregation desires an extension, such Owner or Operator must submit a new SQ Application, and the decision of the

Department on such new application may be made in accordance with the regulations and criteria that are applicable on the date that the Department receives that application.

(8) Suspension or Revocation of Statement of Qualification. The Department may suspend or revoke an SQ if the Owner or Operator of an APS Alternative Generation Unit fails to comply with 225 CMR 16.00.

#### 16.07: Alternative Energy Portfolio Standard

(1) APS Minimum Standard. The total annual sales of each Retail Electricity Product sold to Massachusetts End-use Customers by a Retail Electricity Supplier shall include a minimum percentage of electrical energy sales with APS Alternative Generation Attributes, as specified in the table in 16.07.

### **MASSACHUSETTS ALTERNATIVE ENERGY PORTFOLIO STANDARD**

#### **MINIMUM PERCENTAGES OF ANNUAL ELECTRICAL ENERGY SALES WITH APS ALTERNATIVE GENERATION ATTRIBUTES**

Compliance Year	Cumulative Minimum Percentage
2009	0.75
2010	1.25
2011	1.75
2012	2.25
2013	2.75
2014	3.25
2015	3.75
2016	4.00
2017	4.25
2018	4.50
2019	4.75
2020	5.00

(2) Post-2020 Minimum Standard. After 2020, the Minimum Standard shall increase by 0.25% per Compliance Year.

#### 16.08: Compliance Procedures for Retail Electricity Suppliers

(1) Standard Compliance. Each Retail Electricity Supplier shall be deemed to be in compliance with 225 CMR 16.00 if the information provided in the Compliance Filing submitted pursuant to 225 CMR 16.09 is true and accurate and demonstrates compliance with 225 CMR 16.07. A Retail Electricity Supplier shall demonstrate to the satisfaction of the Department that APS Alternative Generation Attributes used for compliance have not otherwise been, nor will be, sold, retired, claimed, used or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

(2) Banked Compliance. A Retail Electricity Supplier may use APS Alternative Generation

Attributes produced in one Compliance Year for compliance in either or both of the two subsequent Compliance Years, subject to the limitations in 225 CMR 16.08(2) and provided that the Retail Electricity Supplier is in compliance with 225 CMR 16.00 for all previous Compliance Years. In addition, the Retail Electricity Supplier shall demonstrate to the satisfaction of the Department that such Attributes:

(a) were in excess of the APS Alternative Generation Attributes needed for compliance in the Compliance Year in which they were generated, and that such excess Attributes have not previously been used for compliance with 225 CMR 16.00;

(b) do not exceed 30% of the APS Alternative Generation Attributes needed by the Retail Electricity Supplier for compliance with the APS Minimum Standard in the year they were generated, subject to 225 CMR 16.09(2)(d);

(c) were produced during the Compliance Year in which they are claimed as excess by the generation of electrical energy sold to End-use Customers in the ISO-NE Control Area, by the generation of electrical energy on End-use Customers' sides of retail meters in the ISO-NE Control Area, or by the generation of electrical energy from Off-grid Generation Units in Massachusetts; and

(d) have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

(3) Alternative Compliance. A Retail Electricity Supplier may discharge its obligations under 225 CMR 16.07, in whole or in part, for any Compliance Year by making an Alternative Compliance Payment (ACP) to the Massachusetts Clean Energy Technology Center, established by M.G.L. c. 23J s. 2. Such funds shall be held in an account separate from other accounts of the Corporation.

(a) Procedures. A Retail Electricity Supplier shall receive Alternative Compliance Credits from the Department, subject to the following:

1. The quantity of Credits, specified in MWhs, that can be applied to its obligations under 225 CMR 16.07(1) shall be determined by calculating the ratio of the total of ACPs paid for the Compliance Year to the ACP Rate for that Compliance Year.

2. The ACP Rate for the APS Minimum Standard shall be \$20 per MWh for Compliance Year 2009. For each subsequent Compliance Year, the Department shall publish the ACP Rate by January 31 of the Compliance Year. The ACP Rate shall be equal to the previous year's ACP Rate adjusted up or down according to the previous year's Consumer Price Index.

3. The Retail Electricity Supplier shall include with its Annual Compliance Filing copies of any ACP receipt(s) for ACPs made to the Massachusetts Clean Energy Technology Center during the Compliance Year.

(b) Use of Funds. The Department shall oversee the use of ACP funds by Massachusetts Clean Energy Technology Center, so as to further the commercial development of Alternative Generation.

## 16.09: Annual Compliance Filings for Retail Electricity Suppliers

(1) Date of Annual Compliance Filing. For each Compliance Year, the Retail Electricity Supplier annually shall file an annual Compliance Filing with the Department no later than the first day of July, or the first Business Day thereafter, of the subsequent Compliance Year.

(2) Contents of Annual Compliance Filing. For each Retail Electricity Product, the Filing shall document compliance with the provisions of 225 CMR 16.07 and 16.08 to the satisfaction of the Department and shall include, but not be limited to, the following:

(a) Total Electrical Energy Sales to End-use Customers. Documentation of the total MWhs of electrical energy allocated by the Retail Electricity Supplier to End-use Customers in the Compliance Year. Such allocation is defined in 225 CMR 16.09(2)(a) as the total quantity of the Supplier's Certificates Obligation that the Supplier correctly allocated or should have allocated to all of the Supplier's Massachusetts retail subaccounts in the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, or any successor rules.

(b) Electrical Energy Sales to End-use Customers by Product. Documentation of the total MWhs of each Retail Electricity Product allocated to End-use Customers in the Compliance Year, verified by an independent third party satisfactory to the Department, consistent with the Guidelines. Such allocation is defined in 225 CMR 16.09(2)(b) as the quantity of the Supplier's Certificates Obligation that the Supplier correctly allocated or should have allocated to each of the Supplier's Massachusetts retail subaccounts at the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, or any successor rules. The Department shall keep product information confidential to the extent permitted by law.

(c) Attributes Allocated from the Compliance Year. Documentation of the total MWhs of each Retail Electricity Product allocated to End-use Customers that were derived from both APS Alternative Generation during the Compliance Year, and which may include electrical energy generated on End-use Customers' sides of retail meters in the ISO-NE Control Area or by Off-grid Generation Units in Massachusetts in the Compliance Year, as follows:

1. For electrical energy transactions included in the ISO-NE Settlement Market System, the Compliance Filings shall include documentation from the NEPOOL GIS administrator of the Retail Electricity Supplier's ownership of GIS Certificates representing APS Alternative Generation during the Compliance Year.
2. For electrical energy transactions not included in the ISO-NE Settlement Market System, but for which the Retail Electricity Supplier has secured GIS Certificates from the NEPOOL GIS, the Compliance Filings shall include documentation from the NEPOOL GIS of the Retail Electricity Supplier's ownership of GIS Certificates representing APS Alternative Generation during the Compliance Year.

(d) Attributes Allocated from Banked Compliance. Allocation by Retail Electricity Product of any Attributes banked from one or both of the two previous years pursuant to 225 CMR 16.08(2) that are used to demonstrate compliance in the current Compliance Year;

- (e) Alternative Compliance Credits. Allocation by Retail Electricity Product of any Alternative Compliance Credits claimed pursuant to 225 CMR 16.08(3), along with a copy of any Alternative Compliance Payment receipt(s);
- (f) Attributes Banked for Future Compliance. Identification of any Attributes from APS Alternative Generation that the Retail Electricity Supplier anticipates claiming for purposes of Banked Compliance in subsequent years under the Banked Compliance provisions of 225 CMR 16.08(2); and
- (g) Alternative Generation Attributes. Documentation from the NEPOOL GIS of the total electrical energy sales to End-use Customers in the Compliance Year associated with Alternative Generation Attributes.

#### 16.10: Reporting Requirements

- (1) Certification. Any person required by 225 CMR 16.00 to submit documentation to the Department shall provide:
  - (a) the person's name, title and business address;
  - (b) the person's authority to certify and submit the documentation to the Department; and
  - (c) the following certification: "I hereby certify, under the pains and penalties of perjury, that I have personally examined and am familiar with the information submitted herein and based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties, both civil and criminal, for submitting false information, including possible fines and imprisonment."
- (2) Annual Alternative Energy Resource Report. The Department shall produce an annual report that summarizes information submitted to the Department by Retail Electric Suppliers in the Annual Compliance Filing submitted to the Department pursuant to 225 CMR 16.09(2).
- (3) Identification of APS Alternative Generation Units. The Department shall inform the NEPOOL GIS administrator which Generation Units should be designated as APS Alternative Generation Units pursuant to 225 CMR 16.00.

#### 16.11: Inspection

- (1) Document Inspection. The Department may audit the accuracy of all information submitted pursuant to 225 CMR 16.00. The Department may request and obtain from any Owner or Operator of an APS Alternative Generation Unit and any Retail Electricity Supplier information that the Department determines necessary to monitor compliance with and enforcement of 225 CMR 16.00.
- (2) Audit and Site Inspection. Upon reasonable notice to a Retail Electricity Supplier or APS Alternative Generation Unit Owner or Operator, the Department may conduct audits,

which may include inspection and copying of records and/or site visits to an APS Alternative Generation Unit or a Retail Electricity Supplier's facilities, including, but not limited to, all files and documents that the Department determines are related to compliance with 225 CMR 16.00.

#### 16.12: Non-compliance

Any Retail Electricity Supplier or Owner or Operator of a APS Alternative Generation Unit that fails to comply with the requirements of 225 CMR 16.00 shall be subject to the following provisions:

- (1) Notice of Non-compliance. A failure to comply with the requirements of 225 CMR 16.00 shall be determined by the Department. A written Notice of Non-compliance shall be prepared and delivered by the Department to any Retail Electricity Supplier or Owner or Operator of a APS Alternative Generation Unit that fails to comply with the requirements of 225 CMR 16.00. The Notice of Non-compliance shall describe the Requirement(s) with which the Retail Electricity Supplier, Owner, or Operator failed to comply and the time period of such non-compliance.
- (2) Publication of Notice of Non-compliance. A Notice of Non-compliance may be published on the Department's website and in any other media deemed appropriate by the Department. Such publication may remain posted until the Retail Electricity Supplier or Owner or Operator returns to compliance as determined by the Department.
- (3) Planning Requirement. A Retail Electricity Supplier that fails to meet the requirements of 225 CMR 16.07 during a Compliance Year shall submit a plan for achieving compliance for the subsequent three years. The plan shall be filed with the Department no later than the first day of September of the Compliance Year subsequent to the Compliance Year for which the Retail Electricity Supplier was out of compliance or such date as the Department may specify.
- (4) Suspension or Revocation of License. The Department shall refer its findings of non-compliance to the Massachusetts Department of Public Utilities. A Retail Electricity Supplier that fails to comply with 225 CMR 16.00 may be subject to the Massachusetts Department of Public Utilities Licensure Action under 220 CMR 11.07(4)(c)1.

#### 16.13: Severability

If any provision of 225 CMR 16.00 is declared invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

#### REGULATORY AUTHORITY

225 CMR 16.00: M.G.L. c. 25A, § 11F ½.